



September 6, 2006

**BY ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re:   *Petition of Time Warner Cable for Preemption Pursuant to Section 253 of the  
Communications Act, as Amended, WC Docket No. 06-54***

Dear Ms. Dortch:

This letter updates the record in the above-captioned proceeding to underscore the urgent need for Time Warner Cable's requested relief.

As Time Warner Cable explained in its Petition for Preemption, the unjustified refusal of the South Carolina Public Service Commission ("PSC") to grant a certificate of public convenience and necessity ("CPCN") has barred Time Warner Cable from entering certain rural areas of South Carolina. In addition to preventing Time Warner Cable from introducing business telecommunications services, the lack of a CPCN has made it impossible for Time Warner Cable to obtain direct interconnection with rural LECs under Section 251 of the Communications Act—without which Time Warner Cable cannot provide residential VoIP service.<sup>1</sup>

---

<sup>1</sup> As Time Warner Cable explained in its parallel Petition for Declaratory Ruling (WC Docket No. 06-55), the South Carolina PSC also has thwarted its ability to enter rural markets by relying on wholesale interconnection-related services from VerizonBusiness (formerly MCI). *See also* Comments of Verizon, WC Docket Nos. 06-54 and 06-55 (Apr. 10, 2006). The PSC ruled that the unsettled regulatory status of VoIP services justifies rural LECs' refusal to interconnect and exchange VoIP traffic not only with Time Warner Cable, but also with VerizonBusiness. As the overwhelming majority of commenters have recognized, however, Section 251 of the Act plainly authorizes wholesale telecommunications carriers to interconnect and exchange traffic on behalf of VoIP providers irrespective of how VoIP services are classified.

The South Carolina Office of Regulatory Staff (“ORS”)—which represents the South Carolina PSC in this proceeding—has urged denial of Time Warner Cable’s Petition for Preemption because: (1) the PSC already ruled that Time Warner Cable may obtain an interconnection agreement with rural LECs without possessing a CPCN,<sup>2</sup> and (2) Time Warner Cable’s pending complaints against the rural LECs and a state court appeal create an “adequate remedy at law” and signify a failure to “exhaus[t] all available administrative remedies.”<sup>3</sup> The ORS echoed these arguments in a series of June 30 *ex parte* meetings with Commission staff.<sup>4</sup>

While Time Warner Cable’s Petition and reply comments fully refute these assertions, recent proceedings before the PSC further confirm the anticompetitive nature of the state agency’s rulings and their inconsistency with Section 253 of the Act in two important respects.

*First*, the effect of the positions taken by the ORS is to prevent Time Warner Cable from obtaining redress in *any* forum. Shortly after telling this Commission that it should reject Time Warner Cable’s Petition for Preemption on the ground that Time Warner Cable can obtain adequate relief in ongoing state proceedings, the ORS turned around and recommended that the PSC hold Time Warner Cable’s complaints in abeyance in light of the pending FCC proceedings,<sup>5</sup> which recommendation the PSC has followed. This shell game illustrates precisely why preemption under Section 253 is necessary. Despite the PSC’s express findings that Time Warner Cable is fully qualified to hold a CPCN and that its entry into adjacent areas promotes the public interest,<sup>6</sup> the PSC has refused to authorize Time Warner Cable to serve any area in which a rural LEC has opposed its entry. In response to Time Warner Cable’s efforts to obtain relief, the ORS seeks to throw up roadblocks at every turn. Even if the potential for relief in one forum could justify holding a related proceeding in abeyance, there can be no legitimate argument for suspending or rejecting *both* proceedings, as the ORS has advocated.

*Second*, Time Warner Cable is unable to interconnect with rural LECs in South Carolina, and the PSC remains unwilling to respond to the rural LECs’ anticompetitive conduct. As Time Warner Cable has explained, several rural LECs have relied on Time Warner Cable’s lack of a

---

<sup>2</sup> See Response and Opposition of the Office of Regulatory Staff to Time Warner’s Petition for Preemption, WC Docket No. 06-54, at 3-4 (Apr. 7, 2006) (citing PSC Order asserting Time Warner Cable’s supposed entitlement to direct interconnection).

<sup>3</sup> *Id.* at 8.

<sup>4</sup> See Ex Parte Letter of Nanette S. Edwards, Office of Regulatory Staff, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-54, Attachment at 9 (June 30, 2006) (“*ORS Ex Parte Presentation*”).

<sup>5</sup> See *Complaints of Time Warner Cable Information Services (South Carolina), LLC v. St. Stephen Telephone Co., Farmers Telephone Cooperative, Home Telephone Co., PBT Telecom, and Fort Mill Telephone Co.*, Docket Nos. 2005-402-C, 2005-403-C, 2005-404-C, 2005-405-C, 2005-406-C, Proposed Order Submitted by ORS (filed Aug. 7, 2006).

<sup>6</sup> See Petition for Preemption at 20.

CPCN to justify their steadfast refusals to enter into an interconnection agreement.<sup>7</sup> Based on the PSC's assertion that Time Warner Cable does not require a CPCN to obtain interconnection,<sup>8</sup> Time Warner Cable filed complaints with the PSC seeking to compel the rural LECs to interconnect. Time Warner Cable made clear its willingness to operate as a "telecommunications carrier," and indeed it has complied with all applicable carrier regulations since commencing business in the state.<sup>9</sup> Notwithstanding these commitments and the PSC's earlier ruling, the PSC refused to order the rural LECs to enter into interconnection agreements with Time Warner Cable. Rather, following the ORS' recommendation, the PSC opted to hold the complaint proceedings in abeyance in light of the pendency of Time Warner Cable's Petition for Preemption before this Commission and the "open rulemaking proceeding dealing with the rights and duties of interconnected Voice over Internet Protocol providers."<sup>10</sup> Regrettably, this action confirms Time Warner Cable's prediction in the Petition that further state proceedings would prove futile.<sup>11</sup>

Time Warner Cable's application for a CPCN should have been a simple matter for the PSC. Time Warner Cable seeks only to introduce the same competitive telephone service that it has been authorized to provide elsewhere in South Carolina, and that more than 1.6 million consumers nationwide have found to represent a superior alternative to the incumbent carrier's service. Judging from the intransigence of the PSC, one might guess that Time Warner Cable were threatening to inflict great harms on the citizens of South Carolina. To the contrary, Time Warner Cable's Digital Phone service offers exceptional quality and value, and the PSC has yet to assert (much less demonstrate) a single public interest harm. Far from gaming the system, as

---

<sup>7</sup> See Petition for Preemption at 9-10 (describing conduct of St. Stephen Telephone Co., Farmers Telephone Cooperative, Home Telephone Co., .PBT Telecom, and Fort Mill Telephone Co.); see also Reply Comments of Time Warner Cable at 13-14.

<sup>8</sup> See *Application of Time Warner Cable Information Services (South Carolina), LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Interexchange and Local Voice Services in the Service Areas of Certain Incumbent Carriers Who Currently Have a Rural Exemptions*, Order Denying Rehearing or Reconsideration, Docket No. 2004-280-C, at 5-6 (Sept. 26, 2005) (Attachment 7 to Petition for Preemption).

<sup>9</sup> See *Complaints of Time Warner Cable Information Services (South Carolina), LLC v. St. Stephen Telephone Co., Farmers Telephone Cooperative, Home Telephone Co., .PBT Telecom, and Fort Mill Telephone Co.*, Docket Nos. 2005-402-C, 2005-403-C, 2005-404-C, 2005-405-C, 2005-406-C, Complainant's Motion for Summary Disposition at 5 (filed May 24, 2006).

<sup>10</sup> See *Complaints of Time Warner Cable Information Services (South Carolina), LLC v. St. Stephen Telephone Co., Farmers Telephone Cooperative, Home Telephone Co., .PBT Telecom, and Fort Mill Telephone Co.*, Docket Nos. 2005-402-C, 2005-403-C, 2005-404-C, 2005-405-C, 2005-406-C, Commission Directive (issued Aug. 23, 2006). As Time Warner Cable explained in its reply comments, the Commission's *IP-Enabled Services* proceeding has no bearing on its entitlement to a CPCN under state law. See Reply Comments of Time Warner Cable at 8-9.

<sup>11</sup> See Petition for Preemption at 11.

Marlene H. Dortch  
September 6, 2006  
Page 4

the rural LECs have vaguely suggested, Time Warner Cable contributes to federal and state universal service support mechanisms, pays federal and state regulatory assessments, and pays all applicable intrastate and interstate access charges.

For these reasons, and all the reasons set forth in the Petition for Preemption and Time Warner Cable's reply comments, the Commission should promptly direct the PSC to issue a CPCN so that rural consumers in South Carolina can receive the same competitive benefits that urban consumers are able to enjoy.

Please contact the undersigned if you have any questions regarding these issues.

Sincerely,

/s/

Julie Y. Patterson

cc: Michelle Carey  
Scott Bergmann  
Scott Deutchman  
Ian Dillner  
Dana Brown Shaffer  
Thomas Navin  
Julie Veach  
Renee Crittendon  
Marcus Maher  
Jeremy Miller  
Jennifer Schneider